

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Applications to Assign Licenses from Alpine-)
Michigan E, LLC, Debtor-in-Possession, Alpine-)
Michigan F, LLC, Debtor-in-Possession, and RFB)
Cellular, Inc., Debtor-in-Possession, to Dobson)
Cellular Systems, Inc.)
)
File Nos. 0001885064, 0001885147, and)
0001882409)

ORDER ON RECONSIDERATION

Adopted: January 31, 2007

Released: January 31, 2007

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration ("Petition") filed by Alpine PCS, Inc. and Alpine Operating, LLC ("Petitioners") on June 24, 2005.¹ Petitioners seek reconsideration of the May 25, 2005, decision (the "Order") by the Wireless Telecommunications Bureau's Mobility Division (the "Division") granting consent to assign Personal Communications Services ("PCS"), cellular, and ancillary microwave licenses (the "Licenses") from Alpine-Michigan E, LLC, Debtor-in-Possession, Alpine-Michigan F, LLC, Debtor-in-Possession, and RFB Cellular, Inc., Debtor-in-Possession (the "Debtors"), to Dobson (collectively with the Debtors, the "Applicants").² Petitioners argue that we should vacate the Order and require the Applicants to re-file their applications seeking such consent (the "Assignment Applications").³ Petitioners also reiterate their earlier argument that certain spectrum manager lease

¹ On July 5, 2005, Dobson Cellular Systems, Inc. ("Dobson") filed an Opposition to and Request for Summary Dismissal of Petition for Reconsideration ("Opposition"), and on July 15, 2005, Petitioners filed a Reply to Opposition to Petition for Reconsideration ("Reply").

² Applications to Assign Licenses from Alpine-Michigan E, LLC, Debtor-in-Possession, Alpine-Michigan F, LLC, Debtor-in-Possession, and RFB Cellular, Inc., Debtor-in-Possession, to Dobson Cellular Systems, Inc., File Nos. 0001885064, 0001885147, and 0001882409, and Notifications of Spectrum Manager Leases between Alpine-Michigan E, LLC, Debtor-in-Possession, Alpine-Michigan F, LLC, Debtor-in-Possession, and RFB Cellular, Inc., Debtor-in-Possession, and Dobson Cellular Systems, Inc., File Nos. 0001889423, 0001889451, and 0001889361, 20 FCC Rcd 9822 (WTB 2005) ("Order").

³ Application Assigning Licenses from Alpine-Michigan E, LLC, Debtor-in-Possession, to Dobson Cellular Systems, Inc., File No. 0001885064 (filed Oct. 1, 2004; amended Dec. 22, 2004); Application Assigning Licenses from Alpine-Michigan F, LLC, Debtor-in-Possession, to Dobson Cellular Systems, Inc., File No. 0001885147 (filed Oct. 1, 2004; amended Dec. 22, 2004); Application Assigning Licenses from RFB Cellular, Inc., Debtor-in-Possession, to Dobson Cellular Systems, Inc., File No. 0001882409 (filed Oct. 1, 2004; amended Dec. 22, 2004) ("Assignment Applications").

arrangements entered into by the Debtors and Dobson (the “Leases”) “effect[ed] a *de facto* transfer of control of the Licenses prior to” the Commission’s consent to the Assignment Applications, such that revocation of the Order granting the Assignment Applications would be appropriate.⁴ For the reasons set forth below, we deny the Petition.

II. BACKGROUND

2. On August 5, 2003, Alpine-Michigan E, LLC, Alpine-Michigan F, LLC, and RFB Cellular, Inc. (collectively, “Alpine Licensees”) along with other licensees, all controlled at the time by Robert F. Broz (“Broz”), filed voluntary petitions for bankruptcy relief under Chapter 11 of the Bankruptcy Code (“Chapter 11”),⁵ in the United States Bankruptcy Court Central District of California, Northern Division (“Bankruptcy Court”).⁶ Pursuant to the Commission’s rules,⁷ involuntary applications were filed on September 4, 2003, to assign the Licenses from the Alpine Licensees to the Debtors.⁸ The Commission granted these involuntary applications without written decision on October 1, 2003.⁹

3. On January 5, 2004, the Bankruptcy Court ordered relief from the Chapter 11 automatic stay to permit the Debtors’ creditors to pursue the appointment of a receiver in state court.¹⁰ Certain creditor banks then filed a receivership action in the Circuit Court for the County of Otsego, Michigan (“Michigan Court”) requesting appointment of William B. Calcutt (“Calcutt”) as the receiver with respect to the stock or membership interests of the Debtors (and other related debtors-in-possession previously controlled by Broz, collectively with the Debtors, the “DIPs”),¹¹ and on February 3, 2004, the Michigan Court entered an order approving the creditors’ request. The Debtors subsequently filed with the Commission involuntary applications, dated March 3, 2004, reporting the transfer of control of the Licenses to Calcutt, as Receiver (the Michigan Receivership Applications).¹² Petitioners contested the Michigan Receivership

⁴ See Petition at 6. In the Order, the Division deferred action on the Lease Notifications, stating it would further explore Petitioners’ claims. See 20 FCC Rcd at 9829-30.

⁵ 11 U.S.C. §§ 1101 *et seq.*

⁶ See Exhibit A to each of the following: Application Assigning Licenses from Alpine-Michigan E, LLC to Alpine-Michigan E, LLC, Debtor-in-Possession, File No. 0001440082 (filed Sept. 4, 2003); Application Assigning Licenses from Alpine-Michigan F, LLC to Alpine-Michigan F, LLC, Debtor-in-Possession, File No. 0001440104 (filed Sept. 4, 2003); Application Assigning Licenses from RFB Cellular, Inc. to RFB Cellular, Inc., Debtor-in-Possession, File No. 0001440130 (filed Sept. 4, 2003) (“DIP Applications”).

⁷ 47 C.F.R. §§ 1.948(c)(2), (g), 24.839(a)(4).

⁸ See Exhibit A to each DIP Application at 1.

⁹ Wireless Telecommunications Bureau Assignment of Authorization and Transfer of Control Applications Action, *Public Notice*, Report No. 1631 (rel. Oct. 8, 2003).

¹⁰ In re: Robert F. Broz, No. ND 03-12189-RR (Bankr. Ct. Cent. D. Ca. Jan. 8, 2004), *available at* Joint Opposition, filed by Cricket Licensee (Reaution), Inc. and Alpine-Fresno C, LLC (Sept. 29, 2004) (“Joint Opposition”), Exhibit A. See also Joint Opposition at 2.

¹¹ See *CoBank, ACB v. RFB Cellular, Inc., et al., Order Appointing Receiver*, File No. 03-0334-CH, at 2 (Cir. Ct. Cty Otsego Feb. 3, 2004), *available at* Joint Opposition, Exhibit B. See also Joint Opposition at 2.

¹² See Application of Alpine-Michigan E, LLC, Debtor-in-Possession, File No. 0001653360 (filed Mar. 4, 2004, amended June 29, 2004); Application of Alpine-Michigan F, LLC, Debtor-in-Possession, File No. 0001653396 (filed Mar. 4, 2004); Application of RFB Cellular, Inc., Debtor-in-Possession, File No. 0001689365 (filed Mar. 19, 2004, amended Mar. 22, 2005) (collectively, “Michigan Receivership Applications”). One application has a filing date of March 19, 2004. See Application of RFB Cellular, Inc., Debtor-in-Possession, ULS File No. 0001689365 (filed Mar. 19, 2004). The filing date of the RFB Cellular DIP application is listed in ULS as March 19, 2004, because the RFB Cellular application was returned to the Debtors by Mellon Bank. See also Applications to Transfer Control of Licenses from Robert F. Broz to William B. Calcutt, *Order*, 20 FCC Rcd 8848 (WTB 2005) (“Receivership Order”).

Applications, filing a petition to deny and a supplemental pleading, dated May 5, 2004 and May 18, 2004, respectively.¹³

4. While those applications remained pending, on September 22, 2004, the Debtors and Dobson entered into a spectrum manager leasing agreement, pursuant to section 1.9020 of the Commission's rules.¹⁴ On October 1, 2004, the Applicants filed the Assignment Applications seeking consent to assign the Licenses from the Debtors to Dobson, and on that same date, also filed the Lease Notifications.¹⁵ The Applicants explained that the spectrum lease agreement would only become effective upon Bankruptcy Court approval of the sale of the Debtors' assets to Dobson. Bankruptcy Court approval was issued on December 16, 2004.¹⁶

5. The Assignment Applications and Lease Notifications appeared on public notice as accepted for filing, with a fourteen-day comment period, on December 8, 2004 and December 15, 2004.¹⁷ Petitioners contested the Assignment Applications and Lease Notifications, but did not file their pleading until January 31, 2005.¹⁸ The Division dismissed the January 2005 Petition as procedurally defective, determining that it had been untimely filed.¹⁹ The Division exercised its discretion, nonetheless, to

¹³ Petition to Deny, filed by Alpine PCS, Inc. and Alpine Operating, LLC (May 5, 2004) ("May 5, 2004 Petition") at 2; Supplement to Petition to Deny, filed by Alpine PCS, Inc. and Alpine Operating, LLC (May 18, 2004) ("May 18, 2004 Supplement") at 1. Specifically, the May 5, 2004 Petition and May 18, 2004 Supplement raised questions regarding the Debtors' and Calcutt's qualifications to be Commission licensees.

¹⁴ 47 C.F.R. § 1.9020.

¹⁵ Notification of Spectrum Manager Lease between Dobson Cellular Systems, Inc. and RFB Cellular, Inc., Debtor-in-Possession, File No. 0001889361 (filed Oct. 1, 2004, amended Dec. 29, 2004); Notification of Spectrum Manager Lease between Dobson Cellular Systems, Inc. and Alpine-Michigan E, LLC, Debtor-in-Possession, File No. 0001889423 (filed Oct. 1, 2004, amended Dec. 29, 2004); Notification of Spectrum Manager Lease between Dobson Cellular Systems, Inc. and Alpine-Michigan F, LLC, Debtor-in-Possession, File No. 0001889451 (filed Oct. 1, 2004, amended Dec. 29, 2004, Feb. 4, 2005) ("Lease Notifications"). The Bankruptcy Court authorized the sale of the Licenses to Dobson on August 13, 2004. See RFB Cellular, Inc., No. ND 03-12187-RR (Bankr. Ct. Cent. D. Ca. Aug. 13, 2004), *available at* Joint Opposition, Exhibit C.

¹⁶ See Assignment Applications at Exhibit 4 (amended Dec. 22, 2004).

¹⁷ Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications Accepted for Filing, *Public Notice*, Report No. 2011 (rel. Dec. 8, 2004); Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications Accepted for Filing, *Public Notice*, Report No. 2017 (rel. Dec. 15, 2004) (collectively, the "Accepted for Filing PNs").

¹⁸ See Request for Commission Action and Supplement to Petition to Deny, filed January 31, 2005, by Alpine PCS, Inc. and Alpine PCS Operating, LLC (the "January 2005 Petition"). Petitioners also referred to and attached the May 5, 2004 Petition filed against the Michigan Receivership Applications, *see supra* note 12, which raised questions regarding the Receiver's basic qualifications to be a Commission licensee. Specifically with regard to the Lease Notifications, the Petitioners requested that "the [Commission] . . . investigate this transaction, notify the Bankruptcy Court that it is illegal and in violation of the Communications Act and the FCC's rules, and order Dobson to return Debtor's FCC-regulated PCS networks to the *status quo ante*."

¹⁹ Pursuant to our streamlined approval process for license assignments and transfers of control, all petitions to deny had to be filed within fourteen days from the release of this public notice. See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230, *Report and Order and Further Notice and Proposed Rulemaking*, 18 FCC Rcd. 20,604, 20,683 ¶ 197 (2003). Thus, the Accepted for Filing PNs established that all petitions to deny the Assignment Applications had to be filed by December 22, 2004 and December 29, 2004, respectively. Petitioners did not explain why they were unable to timely file their petition. In their Petition for Reconsideration, Petitioners do not contest the Division's finding that the submission was untimely filed.

address Petitioners' arguments on the merits, but found them unpersuasive.²⁰ The Division dismissed the petition to deny and, finding further that the "assignment of the Licenses [was] in the public interest, convenience, and necessity," granted the Assignment Applications.²¹

6. In seeking reconsideration of the Assignment Applications, Petitioners' raise two issues that they raised, and which were addressed, in the proceedings below. First, they reiterate that because the Assignment Application was filed by the Receiver and accepted for filing by the Commission prior to the action on the Receivership Applications, these actions were premature. Petitioners' requested remedy for the allegedly premature filing is that the Commission vacate the Order and require the Applicants to refile the Assignment Applications. Second, Petitioners reiterate their allegation that the spectrum manager leasing arrangement "was a 'lease' in name only, and continue to maintain that if the Commission finds "as it should" that Dobson engaged in an unauthorized transfer of control by entering into the Leases, then Dobson's qualifications as a Commission licensee are called into question and the Commission "would have grounds to revoke its grant" of the Assignment Applications.²²

7. In their Opposition, the Applicants argue that Petitioners lack standing to contest the Assignment Applications.²³ Stating that Petitioners have "failed to either cure or explain [their] untimely participation" in the proceeding at the initial stage, the Petition "must be summarily dismissed on procedural grounds."²⁴ Petitioners counter that, because "[their] FCC licenses are at issue, . . . [they] have been integrally involved in this matter at all stages and [have] the right to seek reconsideration . . . as a party to this proceeding."²⁵ Even if we assume *arguendo* that Petitioners have standing, we find their Petition procedurally defective on other grounds, and therefore need not and do not reach the issue of standing raised by the Applicants.

III. DISCUSSION

A. Receiver's Legal Authority to File the Applications

8. In complaining that the Receiver lacked legal authority to file the Assignment Applications prior to the Commission's disposition of the Receivership Applications, Petitioners have merely reiterated an argument they raised, and which the Commission addressed, in the proceeding below. Noting that "the filing and processing of an involuntary application – such as the transfer of control . . . from Broz to Calcutt – is intended to reflect an event that has already occurred pursuant to, for example, the order of a court with appropriate jurisdiction,"²⁶ the Division rejected Petitioners' argument. Petitioners do not raise any new facts or concerns to warrant reconsideration of the Division's decision on this issue. As the

²⁰ See Order, 20 FCC Rcd at 9825-30 (except that, with regard to the Lease Notifications, the Division deferred action, *see supra* note 4). The Division also exercised its discretion to address the merits of Petitioners' arguments with respect to the Receivership Applications, but found those arguments unpersuasive as well. See Receivership Order, 20 FCC Rcd at 8852-59.

²¹ Order at 9830-31.

²² Petition at 6.

²³ Opposition at 2-3.

²⁴ *Id.* at 3.

²⁵ Reply at 2.

²⁶ Order, 20 FCC Rcd at 9830.

Commission has stated, a petition for reconsideration “that simply repeats arguments previously considered and rejected will be denied.”²⁷

9. In any event, we have reviewed the entire record in this case and find that the facts do not support Petitioners’ argument concerning the Receiver’s authority. The Michigan Court had appointed Calcutt as Receiver on February 3, 2004, as noted above. The Michigan Court granted the Receiver the right, *inter alia*, to exercise all voting, consent and approval rights with respect to the stock or membership interests of the Debtors.²⁸ The Receiver exercised these rights and appointed Bruce C. Conklin, Jr. (“Conklin”) as the sole managing member of the Debtor, subject to the approval of the Bankruptcy Court.²⁹ Subsequently, on March 15, 2004, the Bankruptcy Court approved the Debtors’ motion to appoint Conklin as either the sole managing member or sole member of the board of directors, as applicable, of each of the Debtors. The Court also approved the Debtors’ motion to strip Broz of his title as Chief Executive Officer and appoint Conklin as Chief Responsible Officer (“CRO”). Conklin signed the Assignment Application in his capacity as CRO. Petitioners do not claim that Conklin exceeded his authority in so doing. Moreover, it is the Commission’s long-standing policy to defer to courts of competent jurisdiction, including where, as here, a court determines that a Commission license should be assigned to a Receiver.³⁰ We find no basis on which to depart from that policy in this case.

B. Allegations Concerning the Leases

10. With regard to their allegations that, by entering into the Leases, Dobson engaged in an unauthorized transfer of control, we find that Petitioners have failed to provide adequate evidence to support such allegations. Contrary to the statutory requirements, they have not proffered “specific allegations of fact sufficient to show that . . . a grant of the application[s] would be *prima facie* inconsistent” with the public interest, convenience, and necessity.³¹ Notably, Petitioners have not provided, either with their January 2005 Petition or their Petition for Reconsideration, an “affidavit of a person or persons with personal knowledge” of their allegations of fact.³² On the evidence before us, we reject Petitioners’ allegations as bare and unsubstantiated.

IV. CONCLUSION

11. We find that the Petition largely raises issues previously raised in a related proceeding and which the Commission has already addressed and rejected as meritless. Concerning the Leases, we find that Petitioners have not met the evidentiary requirements under the Communications Act or our Rules. In

²⁷ Infinity Broadcasting Operations, Inc., *Memorandum Opinion and Order*, 19 FCC Rcd 4216, 4216 (2004) (citing Bennett Gilbert Gaines, 8 FCC Rcd 3986 (Rev. Bd. 1993)).

²⁸ See Receivership Order, 20 FCC Rcd at 8850 n.16.

²⁹ See *id.*

³⁰ See, e.g., Applications of Dale J. Parsons, Jr., 10 FCC Rcd 2718, 2720 (1995) (“Parsons”) (noting the Commission would “accommodate the determination of the [bankruptcy] court that the assets and license of KLHI-FM should be assigned to the Receiver,” and denied the objections and granted the application seeking such assignment). Petitioners’ own reliance on the Commission’s Parsons decision is misplaced. See Petition at 3, n.7. The Commission noted its disfavor of a bankruptcy court’s action ordering a receiver to “operate” the station at issue, see Parsons, 10 FCC Rcd at 2720-21, but Petitioners have not proffered any evidence that similar facts exist in the instant proceeding. Moreover, the Commission in Parsons found extraordinary circumstances to excuse the receiver in that case from operating the station prior to receipt of Commission approval to the assignment of the license. See *id.* See also Applications of D.H. Overmyer Telecasting Co., Inc., *Memorandum Opinion and Order*, 94 FCC 2d 117, 123 (1983).

³¹ 47 U.S.C. § 309(d)(1). See also 47 C.F.R. § 1.939(d).

³² 47 U.S.C. § 309(d)(1); 47 C.F.R. § 1.939(d).

sum, they have not presented any new facts, nor have they persuaded us otherwise that the underlying grant of the Assignment Applications was erroneous. Based on our review of the record, we do not find anything to support vacating the Order and requiring the Applicants to resubmit the Assignment Applications. We thus affirm grant of the Assignment Applications.

V. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to the authority granted in Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 405, and Section 1.106(j) of the Commission's rules, 47 C.F.R. § 106(j), the Petition for Reconsideration filed by Alpine PCS, Inc. an Alpine Operating LLC on June 24, 2005, is DENIED.

13. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Cathleen A. Massey
Deputy Chief, Wireless Telecommunications Bureau